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Guatemala's Justice System on Trial

by LADB Staff

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A suit against the state of Guatemala in the murder of Guatemalan anthropologist Myrna Mack (see NotiCen, 2002-10-10) opened on Feb. 18 at the Inter-American Court of Human Rights (IACHR) in Costa Rica. The suit, brought by Helen Mack, sister of the victim and head of the human rights organization Fundacion Myrna Mack (FMM), charged the state with denial of justice in connection with the 1990 murder.

The prosecution planned to call nine witnesses and six experts, including Bishop Juan Cabrera, who knew the anthropologist when she was doing research on indigenous people displaced by the civil war in the department of El Quiche. It was for this research, and its publication, that the anthropologist was killed, according to facts established in the 1993 trial that found army Sgt. Noel Beteta guilty of the murder (see Update, 1993-02-19).

Myrna's daughter Lucrecia Hernandez Mack also testified to the "suffering and pain inflicted by the murder of her mother, as well as the multiplicity of formalities she was subjected to in the search for justice," said a press release. Helen Mack said the trial against the state is for failure to guarantee the life of her sister, for denial of justice, and for delaying tactics in bringing those responsible to justice. The suit seeks not only condemnation of the state, but also compensation for psychological and moral damage, as well as medical and legal expenses the family has sustained over a period of more than 12 years.

Myrna Mack was killed on Sept. 11, 1990. In 1993, Beteta, of the Estado Mayor Presidencial (EMP), was convicted of the crime. In Oct. 2002, his superior officers were tried in Guatemalan court, but only one of three, Col. Juan Valencia, was found guilty of having ordered the assassination. Although acquitted, the other two, Gen. Edgar Godoy and Col. Juan Oliva, remain in prison on an appeal of the case filed by Helen Mack. The prosecution also expects that the trial in the IACHR will bring to light the deficient condition of the justice system in Guatemala (see NotiCen, 1999-09-09), the mechanisms by which impunity is perpetuated, and the complicity of state structures in the evasion of justice.

"The state has demonstrated that it has not been able to administer justice in a reasonable time, because the maximum time is six years, and it took nearly 12 to try and sentence [these defendants]," said Mack. At the conclusion of this case, Mack will return to Guatemala to press the appeal of the decisions against Godoy and Oliva. She will not seek a new trial against them but a resentencing based on the first trial, which will send them to jail, rather than allow them to go free.

State accepts some responsibility

On Feb. 14, the Guatemalan government, in a short press release from the Foreign Ministry, said, "The government communicated officially to that honorable court [IACHR] that the

state of Guatemala has resolved to accept international responsibility in the case, upon having failed in its obligation to impart prompt and due justice." The press release gave no details, but added, cryptically, "The explanation, foundation, and scope of the recognition of international responsibility will be revealed in detail in the hearing anticipated on the 18th of the present month."

Mack was unmoved by the admission, particularly by the phrase "international responsibility." She was seeking institutional responsibility. "I have to act with caution, because I don't know the explanation, the foundation, and the scope of the recognition of responsibility that the state of Guatemala sent the IACHR," she said. "The recognition made by the state is uncertain. We don't know what it covers, and therefore, we will continue to be prepared to confront the verdict, and we are convinced that the state of Guatemala will come out condemned."

On Feb. 18, at the commencement of the proceedings, the government strategy became clear. Foreign Relations Minister Edgar Gutierrez (see NotiCen, 2002-08-22) was in court to present the state's recognition of partial responsibility, his presence dramatizing the importance with which Guatemala now regards the case. Gutierrez followed his declaration with a plea to the court to suspend the hearing and proceed directly to the sentencing phase. The court denied the plea and immediately went on to hear testimony from Lucrecia Hernandez Mack, who testified, "My mother was assassinated for political reasons. She was telling of the existence of these populations and also the way in which the army had been massacring them."

Helen later told the press that the government's attempt at generic responsibility fell short of what was necessary: full admission that the military was responsible. "The state of Guatemala must admit that the organization directly responsible for the crime against Myrna Mack is the military Estado Mayor Presidencial of the country," she said. The EMP, whose formal mission is the protection of the president, has repeatedly, over the years, been accused of political assassinations and violations of human rights. Despite the government's agreement to disband the unit as part of the 1996 peace accords, it continues to exist and to function.

For the Guatemalan state, the stakes in this trial could not be higher. In attempting to convince the court that its admission of responsibility would make moot the details, the state failed at shifting the terms of debate from its historic role as sponsor of institutional terrorism to the relatively benign question of how much it has to pay for having failed in its obligation to impart swift and due justice. Also at stake for the beleaguered Guatemalan government is the viability of its justice system.

Another of the government's arguments is that this court lacks jurisdiction because this case is still pending in the Guatemalan courts. Counsel for Guatemala Ricardo Alvarado viewed the process as turning on the concept of "the state." "The state, through its internal justice system, is continuing and very slowly, it must be said a process that will allow it to determine whether the EMP was responsible. But it is not possible that the state, through its other agencies, accept [the guilt of the EMP] before the judges of the internal justice system decide it. So what they [the complainants] are trying to do is debilitate public institutionality and the rule of law." With this analysis, Alvarado held out the possibility that Guatemala could, on its own, come to the conclusion sought by Mack and would strengthen its institutions in the process. "At this point," he recalled, "the sentence is not firm because it is pending in the appeals process." Helen Mack called the state's position

"totally unacceptable." She said, "The state has confused jurisdictions. The case at the national level is completely distinct from that at the inter-American level, and if I came to the inter-American level, it is precisely because justice in Guatemala does not function. These are the same games they have played with me throughout these 12 years, not only at the international level, but also at the national."

This discussion was one of the foci of the trial; the IACHR had to decide whether it in fact was competent to hear the case. Lyndon Tretter, judicial advisor to the Fundacion Myrna Mack, told the court that their side was not asking that the IACHR interfere in the internal proceedings of Guatemalan justice, but "we believe that the state can, and has the authorization to, admit its complicity without prejudicing individual rights." The court concurred. Referring to Guatemala's acceptance of "international responsibility," Tretter said, "I hope that the Inter-American Court sees that an acceptance of responsibility without name, without face, is insufficient." The day's events were more than the Guatemalan government could bear.

On Feb. 19, Alvarado told the magistrates that the state could not listen to any more of the witnesses' expositions. Guatemala would, however, "be present at the conclusion of the public hearing to establish its final position on the matter." Alvarado went on to acknowledge that the state respects the IACHR decision to take the case, but "the representatives of Guatemala cannot stay here listening to conclusions that our judicial system has yet to settle."

Court president Antonio Cancado responded by reading aloud for the benefit of the Guatemalans the rules of the court for a situation like this, concluding, "We await the presence of the state for the presentation of its final position at the opportune moment in these public hearings." Alvarado later told Notimex that his team's walkout did not undermine Guatemala's case. "On the contrary, we need to avoid further weakening the justice system in Guatemala," he said. Visibly upset, he continued, "We are strengthening it; there is no weakness. The state of Guatemala has already done what it had to do; it already admitted its responsibility. We believe that there is sufficient evidence for a judgment to be reached."

Helen Mack saw the withdrawal as an affront to the inter-American system, amounting to a withdrawal of recognition of the IACHR. She said that the state's action was evidence that Guatemala did not want a precise finding that the EMP was responsible for the murder of her sister. "This is really a slap in the face of the inter-American system, a lack of respect for the Inter-American Commission of Human Rights, for the court, and for the system of justice of the Organization of American States (OAS)," of which the court is a part. Mack's view of the case is that the court has rejected weak arguments on the part of the state and that "it confirms our position that the state is not acknowledging anything new" regarding responsibility for the crime.

The courts' decision, after hearing closing arguments on Feb. 20, is expected some time around mid-2003.

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